CASE NO. 84-1334

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In The Supreme Court of the United States

OCTOBER TERM, 1984

HARVEY J. SNYDER, JR., M.D.,
Petitioner,

v.

STATE OF OHIO, THE STATE MEDICAL BOARD,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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13 pp

QUESTIONS PRESENTED

1. Whether a state regulatory system that authorizes the suspension or revocation of a license to practice medicine for violating the statutory criterion of "a departure from, or the failure to conform to, minimal standards of care of similar practioners under the same or similar circumstances" is violative of the Fourteenth Amendment?

2. Whether an administrative order based on reliable, probative and substantial evidence and in accordance with law is correctly affirmed by state courts on review?

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STATEMENT OF THE CASE

INTRODUCTION

On November 15, 1979, the Ohio State Medical Board, Respondent [hereinafter "Board"], issued a formal letter of citation to Petitioner, Dr. Harvey J. Snyder, Jr., setting forth six (6) allegations that Petitioner, in his pre- and post-natal care of female patients, and in his delivery of babies, violated the Medical Practice Act, Revised Code of Ohio Chapter 4731 [hereinafter R.C.]. Petitioner was advised in the Notice that the Board would consider whether to limit, reprimand, revoke, suspend, place on probation, or refuse to register or reinstate his Certificate to practice medicine. Pursuant to R.C. Chapter 119., Petitioner was advised that he was entitled to a hearing in this matter, and he requested a hearing, which was held on February 12, 1980, and March 11, 1980.

On August 13, 1980, the full Board, having reviewed the evidence, issued the following Order, effective immediately:

> Dr. Snyder shall cease all obstetrical practice in all settings, including office, home, and hospital, shall not render any pre-natal care to pregnant women, and shall not render any post-natal care to mothers or infants, and shall not deliver babies.
>
> In addition, Dr. Snyder shall make available his clinical records for review by an investigator or other agent of the Board on a monthly basis.

A copy of that Order was before the state courts as State Exhibit No. 1, in the Record of the Administrative Proceedings [hereinafter "R"] which was filed with and reviewed by the Ohio courts.

Petitioner appealed said Order to the Court of Common Pleas, pursuant to R.C. Section 119.12. (Petitioner's Appendix, p. 42). On April 9, 1981, the Court of Common Pleas issued an "Opinion and Decision" which affirmed the Board's Order. On October 21, 1981, the Ninth District Court of Appeals affirmed the lower court and upheld the Board's Order. Finally, on February 17, 1982, the Ohio Supreme Court declined to hear the case.

PROCEDURAL POSTURE

On the basis of additional evidence, setting forth similar allegations against Petitioner, the Board issued a second Notice of Opportunity for hearing letter on January 14, 1981. Petitioner again requested a hearing which was held on March 19, 1981, and June 24, 1981. At this hearing, Petitioner was represented by counsel, and witnesses were examined and cross-examined on his behalf.

The Board, on December 2, 1981, Ordered that Petitioner's license to practice medicine be indefinitely suspended, effective immediately. The Order was appealled to the Court of Common Pleas and it is solely that Order as affirmed by both the court of common pleas and court of appeals with certiorari denied by the Ohio Supreme Court, which is at issue before this Court.

The common pleas court issued its Judgment Order, September 14, 1983 [Petitioner's Appendix, p. 23] in which it found:

> . . .[T]hat there is ample reliable, probative, and substantial evidence in the record from which the Board could have concluded that Snyder departed from, or failed to conform to, 'minimal standards of care of similar practitioners under the same or similar circumstances' in his treatment of Elizabeth Cline, and in the delivery and subsequent treatment of Rhianna Cline.

From that decision the Petitioner sought review by the court of appeals. The matter was fully briefed and argued orally. That court overruled every assignment of error and affirmed the common pleas court's decision. (Petitioner's Appendix, p. 32.)

The Petitioner sought further review from the Ohio Supreme Court which denied *certiorari* as the Court of Appeals was correct in its holdings and as the case presented no question of general or public interest nor any constitutional question which has not been correctly decided by the lower courts. (Petitioner's Appendix, p. 40.)

STATEMENT OF FACTS

Briefly, the facts are that subsequent to Petitioner's license to practice medicine having been limited by the Board to prohibit him from practicing obstetrics or delivery of children, he, by his own admission, delivered

Elizabeth Cline and at least one other woman of children at his office. Further, his practices in the delivery of the Cline baby failed to conform to minimal standards of care as required by the Medical Practice Act, R.C. Chapter 4731.

The Record before the state courts was replete with reliable, probative and substantial evidence which proved the charge contained in the Notice of Opportunity for Hearing letter. The question for the state courts was whether there was reliable, probative and substantial evidence supporting a finding that Petitioner engaged in obstetrical practice after having had his license limited by the Board and whether the actions alleged regarding treatment of Ms. Cline occurred. The question of whether his treatment of Ms. Cline violated the statutory standard is neither and evidentiary one nor reviewable by the court; see, *Arlen v. State Medical Board,* 61 Ohio St. 2d 168 (1980). Even a brief review of the Record would show reliable, probative and substantial evidence to support the Board's findings.

It is undisputed that Petitioner engaged in obstetrical practice and the delivery of the Cline baby after having had his license limited by the Order of August 18, 1980. Most conclusive are his admissions. For example, in addition to acknowledging his obstetrical care of Ms. Cline he admitted:

> I had just delivered anothe woman at approximately, oh, 11 o'clock in the morning there at the office, and this other woman was still on the delivery table an hour or so later; and I remember telling her, 'We are going to have to move you

> someplace else, because a woman [Ms. Cline] just called me, her water has broke and she is coming in,' and that was about 12 o'clock.

[Transcript 2, p. 94]. He admitted his obstetrical care of Ms. Cline and the delivery of her baby. Petitioner's admissions are conclusive and he may not, in light thereof, argue that there was error as to findings of fact.

Although Petitioner disputed some facts, the Record is replete with testimony and evidence from various witnesses as to Petitioner's course of treatment of Ms. Cline and her infant. With evidence of such facts in the Record the Board exercised its expert knowledge and discretion and concluded that such conduct violated the statutory criteria set forth at R.C. 4731.22, i.e., failure to conform to minimal standards of care. (Petitioner's Appendix, p. 45.)

SUMMARY OF ARGUMENT

There is no justification for certiorari in this case. The matter involves individual relief and presents no issue of national importance.

Petitioner is attempting to have this court review factual determinations. The finding of facts is for the trier of fact. The Board's findings have been reviewed by three levels of state courts. No matter is presented for this worthy court to consider.

A statutory criteria for the regulation of health professions is not unconstitutionally vague where it specifies that departure from or failure to conform to

minimal standards of care of similar practitioners is a ground for suspension of a license. The law is settled that "unprofessional conduct" is not unconstitutionally vague. How much less vague is an explicit statutory standard?

The national law is settled on both questions raised by Petitioner. No issue worthy of review by this Honorable Court is presented.

ARGUMENT IN OPPOSITION TO CERTIORARI

This Honorable Court should not grant certiorari in this case as the matter involves only individual relief sought by a disgruntled physician who has been consistently ruled against by the judicial system of Ohio, from the administration level's initial Order to the Ohio Supreme Court's denial of certiorari. The case does not present any matter of national interest. The Supreme Court does not sit for the benefit of particular individual litigants and certiorari should not be granted except in cases involving principles the settlement of which is of importance to the public interest as distinguished from that of the parties. *Rice v. Sioux City Memorial Park Cemetary,* 349 U.S. 70, 75 S. Ct. 614, 99 L. Ed. 897 (1955).

A writ of certiorari is not a matter of right but of judicial discretion. The criteria to be considered in reviewing a petition for a writ of certiorari are set forth at Rule 17 of the rules of the Supreme Court. None of the factors to be considered under Rule 17 are met in this case. Specifically, Rule 17 provides in relevant part:

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

The opinions of the Ohio Courts in this case do not reflect any decision of a federal question which in any way conflicts with a decision of another state court of last resort, nor has petitioner alleged any. Neither do the state decisions conflict with the decisions of any federal court.

More importantly, the Ohio Courts in this case have not decided any important questions of federal law.

The first question presented by Petitioner is without merit as it is settled that statutory criteria such as "incompetent" or "unprofessional" for the suspension or revocation of licenses will be upheld. 29 ALR 3d 489; *Brinkley v. Harsig,* (1936) 83 F.2d 351; *Re: Walker's License,* (1941) 210 Minn. 337, 300 N.E. 800; *State Board of Dental Examiners v. Savelle,* (1932) 90 Colo. 171, 8 P. 2d 693; and *Yoshizawa v. Hewitt,* (1931) 52 F.2d 411; *Yee Bow v. City of Cleveland,* (1919) 99 Oh. St. 269. In a technical profession it is impossible or impracticable to provide definite standards as to detailed

conduct and therefore general criteria will be upheld. *Matz v. the J. L. Cutis Cartage Co.,* (1937) 132 Oh. St. 271.

The Ohio Supreme Court has addressed already the language of R.C. 4731.22(B)(6) in *Arlen v. State,* (1980) 61 Oh. St. 2d 168. That Court opined that "minimal standards of care of similar practitioners under the same or similar circumstances," is similar to the "reasonably prudent man" standard of tort law. Just as a general standard is sufficient against which to evaluate conduct in a tort action – the law could not possibly specify every conceivable potentially tortious act –, so too is the general standard "minimal standards of care" sufficient to evaluate conduct in a medical regulatory proceeding – the law could not possibly specify every conceivable act that might fall below minimal standards.

Petitioner's second question would have a reviewing court resolve conflicting testimony rather than leave such matters ofr the trier of fact. The respective roles of reviewing courts and trial courts is well established and this case does not present any novel federal question that requires this Court to reconsider those time-honored functions.

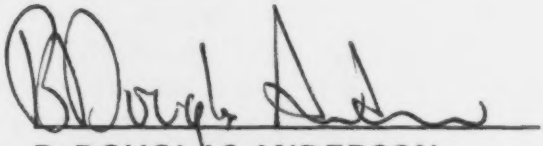
CONCLUSION

This case presents merely the "last-ditch" effort by an incompetent physician, whose license to practice medicine was correctly and properly suspended, to retain that license. There is no issue of general or substantive national public interest presented. Certiorari would only confirm the reasoning and result of the court below.

Wherefore, the Respondent, Ohio State Medical Board, asks this Court to *deny* the writ of certiorari.

Respectfully submitted,

ANTHONY J. CELEBREZZE, JR.
Attorney General of Ohio



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Respondent's Brief in Opposition to Petition for Writ of Certiorari has been forwarded to the petitioner through the office of his Counsel of Record, Robert Bruce Henn, Henn and Cain, P.O. Box 611, Medina, Ohio 44258-0611, and Bernard L. Moutz, 3808 Mogadore Road, Mogadore, Ohio 44260. I further certify that all persons required to be served have been so served. Said mailing was made by depositing the appropriate number of copies in the U.S. Mail, first class, postage prepaid, this 21st day of December, 1984.

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